*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.10711 of 2001

%16-3-2006

Vemuri Lakshmi Nageswara Rao and another

...PETITIONERS

Vs.

$ The Joint Collector & Additional District Magistrate, Krishna District at Machilipatnam and others.

...RESPONDENTS

! COUNSEL FOR PETITIONERS: Sri T.S.Anand,

^COUNSEL FOR RESPONDENT No.1: Government Pleader for Home

^COUNSEL FOR RESPONDENT Nos.2 to 4: Sri M.S.Prasad

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. AIR 1974 SC 104
2. 1982 (1) ALT 306
3. AIR 19990 SC 2292
4. 1993 (1) ALT 661 (FB)
5. AIR 1996 SC 140
6. 1992 (3) ALT 312
7. 1986 (2) ALT 92
8. AIR 1991 AP 170
9. AIR 1968 SC 620
10. (1867) L.R.2 Ch.App.294

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10711 OF 2001

16.3.2006

Between:

Vemuri Lakshmi Nageswara Rao and another

… Petitioner

AND

The Joint Collector & Additional District Magistrate, Krishna District at Machilipatnam and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10711 OF 2001

ORDER:

The two petitioners assail the order of first respondent, dated 19.05.2001, as illegal, void and opposed to principles of natural justice and seek to set aside the said order. The first respondent issued impugned order transferring 'B' Form licence to the third respondent in respect of Sri Rama Krishna Theatre, Machilipatnam. Be it noted, the first respondent exercised the powers under the provisions of A.P.Cinemas (Regulation) Act, 1955 (hereafter called, the Act) and A.P.Cinemas (Regulation) Rules, 1970 (hereafter called, the Rules).

The fact of the matter, in brief, is as follows. A cinema theatre known as M/s.Sagar Talkies was constructed by Sava Srinivasa Sastry and Sava Nachara Vara Prasad some time prior to 1974. In that year, the two owners of the cinema theatre sold the theatre to fifteen persons under registered sale deed, dated 26.05.1974. Those persons constituted themselves into a partnership firm and were running the theatre in the name and style of Rama Krishna Talkies. The firm was again re-constituted on 14.07.1990. The cinema theatre obtained 'B' form licence under the Act and the Rules in the name of one Goriparthi Narasimha Raju, who is the uncle of the third respondent, who was at that time the Managing partner, with the consent of all other partners. It is alleged that Nalli Sitaramachandra Rao and Nalli Sundaramma, two of the partners, issued a notice of dissolution allegedly dissolving the firm with effect from 03.11.2000. It is therefore alleged that from 04.11.2000, the third respondent is running cinema theatre without any valid licence. In the meanwhile, on 07.11.2000, the two partners, who allegedly gave notice of dissolution as referred to hereinabove, sold their shares in the assets and liabilities to the petitioners duly intimating the same to the first respondent and further requesting not to renew or transfer the licence. It is also alleged that Naga Raju, the Managing partner, addressed a letter to the first respondent to cancel 'B' form licence on the ground that there are disputes among the partners.

The third respondent herein along with three erstwhile partners and two strangers, allegedly constituted the fourth respondent firm, came to be in unauthorized occupation of the cinema theatre and business of the original firm – the second respondent herein. The petitioners, who are father and son, sent telegram and the detailed representations to the first respondent informing that the fourth respondent is running the theatre illegally without any valid licence. The first respondent issued notice to all the partners and hearing was fixed on different dates. Apprehending that the new firm would continue to screen the films without any objection from the first respondent, the petitioners filed W.P.No.8370 of 2001 directing the first respondent to dispose of the objections filed by the petitioners whreafter the impugned order was passed. The petitioners contend that the second respondent firm having been dissolved with effect from 03.11.2000, the Managing

partner of the said firm could not have validly transferred the 'B' Form licence in favour of fourth respondent. For that reason the impugned order transferring the licence by the erstwhile Managing partner in favour of the third respondent is illegal and arbitrary.

The first respondent filed a counter affidavit opposing the writ petition. It is stated that the 'B' Form licence issued to the second respondent in the name of Goriparthi Naga Raju as a Managing partner was renewed up to 12.10.2003. It is further stated as follows. Narasimha Raju sent a representation informing that the screening of the films in their theatre is stopped with effect from 01.11.2000 in view of the disputes among the partners and that further intimation will be given as and when it is decided to resume the screening. The third respondent made a representation on 09.11.2000 informing that they are operating the theatre from 09.11.2000 as per the licence which is valid up to 2002 and that all the partners unanimously authorized him (third respondent) to run the theatre. After receiving the said representation, dated 09.11.2000, of the third respondent, a notice was issued to all the partners as well as the petitioners herein to attend before licensing authority. At that stage, the third respondent applied to the first respondent to transfer 'B' Form licence of the theatre in his name with due consent of former Managing partner in Form-H. The matter was referred to Mandal Revenue Officer for enquiry, as all the sixteen partners are close relatives. The third respondent also filed writ petition being W.P.No.619 of 2001 seeking a direction to the first respondent to consider the application of the partners for assignment of licence as contemplated under Rule 12A (b)(i) of the Rules. This Court ordered *status quo* regarding screening of the films and directed to dispose of the application for transfer/assignment of licence. In view of the orders, the screening could not be stopped. The Mandal Revenue Officer after conducting enquiry submitted report stating that on 17.04.2001, out of sixteen partners, twelve decided to change the Managing partner in favour of the third respondent and that they also gave the statement to that effect. Each of the twelve partners had 75 per cent share in the firm. Out of the four remaining partners, two partners Sitaramachandra Rao and Sundaramma gave registered notice dissolving the firm and another partner Kola Kesava Raju died as a result of which one of his family members was taken as partner. Yet another partner was not available in the village. The Mandal revenue Officer also recommended transfer of the licence from Narasimha Raju to the third respondent. All the other partners gave consent and therefore it has to be construed that the third respondent is unlawful possession of the theatre and is entitled to run the theatre.

The third respondent has filed a counter affidavit opposing the writ petition. The contents of the same be noticed in brief as follows. The firm was constituted in the name and style of
M/s.Sri Rama Krishna Theatre in 1975 with sixteen partners and the same was not constituted in the name and style of M/s.Rama Krishna Talkies as alleged. The said firm was continued with additions and deletions of partners either due to retirement/death of the partners besides other reasons. As per the partnership deed, retirement or death of any partner shall not result in dissolution. The Managing

partner Narasimha Raju became old and was not in a position to attend to day to day activities. Therefore, it was decided the third respondent should manage the theatre, as Managing partner. The then Managing partner agreed for the same and signed necessary papers. The petitioners are business rivals running Krishna Kishore Talkies. At their behest, the then Managing partner addressed a letter to the first respondent informing that the theatre is being closed down due to disputes among the partners. However, in the interest of the firm, he agreed to transfer the 'B' Form licence in favour of the third respondent and gave a letter to that effect. The petitioners with an intention to close down the theatre got issued notice dated 03.11.2000 by the partners who retired in December, 1999 stating that they want to dissolve the firm. As they already retired from the firm, they are not entitled to dissolve the firm. The licence given to the theatre was valid up to 12.10.2003 and therefore the allegation that theatre is being run without valid licence is not correct. The allegation that Sitarama Chandra Rao and Sundaramma sold their shares to the petitioners is false and in any event, the same is void.

The firm was reconstituted on 09.11.2000 and the previous Managing partner gave a letter of consent in Form H under Rule 12A(b)(i) of the Rules for transferring the licence in favour of the third respondent. The petitioners sent frivolous petitions without any authority to the officials of Entertainment Tax Department and made number of representations to the first respondent to close the theatre. They have no *locus standi* to interfere in the running of the theatre by the third respondent on behalf of the firm. In view of the consent given by the previous Managing partner, the first respondent after issuing notices to all the partners, who did not raise any objection, transferred the licence. Sitarama Chandra Rao and Sundaramma also did not raise any objection before the first respondent. The first respondent issued adequate opportunity to the writ petitioners before passing impugned order and the same does not suffer from any illegality.

Sri P.S.Raghuram, learned counsel appearing for the petitioners, submits that the petitioners being the purchasers of the share of two partners in the firm have *locus standi* to question the transfer of 'B' form licence by the Joint Collector in favour of the newly constituted firm as the petitioners have a right to share in the partnership. He also submits that the first respondent has issued the impugned order placing reliance on the report of the Mandal Revenue Officer and thus the same is vitiated by the lack of independent consideration by a statutory authority. Nextly, it is contended that the first respondent cannot transfer the licence of a dissolved firm to the newly constituted firm as it is not in lawful possession of cinema theatre and that there is no compliance with Rule 12-A(b) of the Rules. He also contends that the application under Rule 12-A(b) of the Rules has to be accompanied by an affidavit, but, in this case, the application was renewed improperly without an affidavit and therefore, the impugned order is vitiated by improper procedure adopted by the first respondent. The learned counsel placed reliance on various provisions of the Partnership Act, 1932, as well as the decisions reported in **M.C.Chockalingam v V.Manickavasagam**, **Koratani Suramma v Government of A.P.,**, **Krishna Kishore Firm v Government of A.P.,**, **Y.Anasuya v Government of A.P**. and **R.V.Bhupal Prasad v State of A.P**.

The learned Government Pleader for Home, Sri K.Ramesh, produced the file from the Office of the first respondent. He submits that when an application was made seeking transfer of the licence, the first respondent got an enquiry conducted by the Mandal Revenue Officer and having regard to the consent given by other partners in favour of the third respondent, the licence was transferred in favour of the third respondent. He would urge that the petitioners have already filed a suit in civil Court and they have to work out their remedies there. The learned counsel for respondents 3 and 4, Sri M.S.Prasad, submits that the petitioners are not partners of any firm and therefore, the writ petition is not maintainable. Secondly, he would urge that the petitioners have already filed a suit before the civil Court seeking for dissolution of the firm and therefore, no importance can be attached to the submission that the firm is already dissolved. He would also urge that the old firm was constituted with sixteen partners and the death or retirement of any partner does not result in dissolution of the firm. The firm was reconstituted with majority of the partners of the old firm and the same cannot be said to be unlawful possession of the cinema theatre. According to the learned counsel, all the partners are co-owners of the property and possession of the co-owners is not unlawful. Sundaramma and her son Sitaramachandra Rao did not file any objections even after receipt of the notice of enquiry. Therefore, the petitioners cannot claim any right to challenge the impugned order.

Two questions would arise for consideration, namely, whether the possession of the cinema theatre by the partners of the reconstituted firm is unlawful, and secondly, whether the petitioners, who filed the suit for dissolution of the old firm, can question the impugned order transferring the licence in favour of the third respondent as representing the firm.

In Re point No.1:

Exhibition of cinematograph films is regulated by the Act and the Rules. Under Section 3 of the Act, no person shall give an exhibition by means of a cinematograph in premises other than in a place licensed under the Act. In the present dispensation, Joint Collector is the licensing authority. Section 5 of the Act contains the restrictions subject to which licensing authority can exercise the powers under the Act. Under the provisions of the Act, the licensing authority can issue licences subject to substantial compliance with the provisions of the Act and the Rules, suspend/cancel such licences for any contravention of the provisions of the Act, Rules or other provisions of the law, impose fines/penalties for contravention of the conditions of licence and initiate criminal action against a licensee in certain given circumstances. As per Section 5(1)(a) of the Act, licensing authority should be satisfied that the provisions of the Act and the Rules made under the Act have been substantially complied with. The Rules made in exercise of powers under Sections 6 and 11 of the Act contain six Chapters. Chapter I is titled as General. It has Rules 4, 6 and 7, which contain certain restrictions. Under Rule 4 of the Rules, a person

below the age of twenty years cannot be granted licence. It further provides that a company or firm or association of individuals whether incorporated or not shall be entitled to obtain or hold any permission or licence under the Act. Rule 6 of the Rules is to the effect that every cinema building has to comply with certain requirements as specified in appendices I to III and V. Rule 7 of the Rules contains restrictions on grounds of population and distance. Chapter II contains the modalities for obtaining permission for construction or re-construction of a cinema building and installation of machinery. Chapter IV and V deal with fees payable and powers and functions of licensing authority respectively. Chapter III contains Rules 11-A, 11-B,
12-A, 12-B and 13 to 15.

Before dealing with these, a reference may be made to Rule 5 of the Rules, which provides for transfer of permission for construction or of licence on the death of the holder of permission/licence. Rule 5(1) of the Rules deals with transfer of permission granted for construction of cinema building under Section 6(2) read with Rule 9-B of the Rules. Rule 5(2) of the Rules deals with transfer of cinematograph licence. The same reads as under.

> **5. Transfer of permission for construction or of licence on the death of the holder of permission/licence:-**
>
> (2) (a) Where the holder of a cinematograph licence dies, **the person succeeding to the possession of the cinema building covered by the licence of the deceased, may, for a period of three months, use the licence as if it has been granted to himself**;
>
> Provided that such person has, within thirty days of the death of the licensee, informed the licensing authority which granted the licence of the death of the licensee and of his own intention to use the licence;
>
> Provided further that no licence shall be used after the date on which it would have ceased to be effective without renewal in the hands of the deceased licensee.
>
> (b) **The licensing authority may, on application made to it within three months of the death of the licensee, transfer the licence to the person succeeding to the possession of the cinema building covered by the licence.**
>
> (emphasis supplied)

Rule 5(2)(b) of the Rules empowers the licensing authority to transfer cinematograph licence – in the event of death of original licensee; to the person succeeding to the possession of the cinema building covered by the licence. It further provides that when the licensee dies, the person succeeding to possession can use the licence for a period of three months as if it had been granted to himself (transferee). This is, however, subject to two conditions, namely, the person succeeding to possession of the cinema building must inform the licensing authority about the death of the original licensee, and inform the intention to use the licence; and, secondly, no licence shall be used after the date, if it would have ceased to be effective without

renewal in the hands of the deceased licensee. Keeping this in view, the Rules in Chapter III of the Rules may now be considered.

Rule 11-A in Chapter III requires an application for grant of licence to be made to the licensing authority in Form-A II accompanied by the construction plans, evidence of payment of necessary fees and other documents/certificates as well as a declaration by the application. Sub-Rules (1) and (2) of Rule 11-B of the Rules are relevant and read as under.

11-B. Grant of licence to Cinema Building:-

(1) Within fifteen days of receipt of such application, the licensing authority shall-

a. If the application is not in accordance with the rules dispose it of in accordance with Clause (a) of sub-rule 9(B).

b. If the application is in order, forward a copy of the application together with its enclosures to the Electrical Inspector and the Executive Engineer (R&B) (in the case of permanent cinema building only) asking for their reports and certificates within thirty days from the date of receipt of the copy of the application and obtain their acknowledgements:

(2) On receipt of the reports and certificates referred to in Clause (b) for sub-rule (1) or, if the same have not been received in time on consideration of the certificates referred to in Clause (c) of Rule 11-A on merits, **if the licensing authority is satisfied that the applicant is in lawful possession of the site, building and equipment he shall, within ten days from the date of receipt of the above reports and certificates or the due date for the receipt of above reports and certificates, grant a licence in Form-B with or without adding additional conditions thereto,** consistent with the provisions of these rules, as he may deem fit in the interest of the health and safety of the public;

Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled and or that, in the case of a temporary cinema building the provisions of Appendix-IV are not fulfilled he may refuse to grant the licence applied for and communicate to the applicant the reasons for such refusal.

Provided also that the period of validity of a licence shall so far it may be co-related with the period of validity of electrical and fire certificate granted in accordance with the provisions in Appendix-VI.

(emphasis supplied)

At the time of granting licence, the licensing authority may within fifteen days of the receipt of application for licence, either reject application if it is not in accordance with the Rules directing the applicant to re-submit within a period of sixty days or if the application is in order, forward the copy of the application to Electrical Inspector and the Executive Engineer of Department of Roads & Buildings for their reports.

Under sub-rule (2) of Rule
11-B of the Rules, after receipt of the reports from those two Departments, the licensing authority may grant licence in Form-B with or without additional conditions thereto. But, licensing authority shall satisfy himself that the applicant is in lawful possession of the site, building and equipment, before granting licence. It is interesting to note that the Act and the Rules are silent as to the consequences in the event of a licensee losing possession of the cinema building or inducting a third party as a lessee or sub-lessee of the cinema building to exhibit cinematograph films. Be that as it is, Rules 12-A and 12-B of the Rules deal with renewal of licence.

Rule 12-A (a) of the Rules deals with making an application for renewal of licence ninety days before the expiry of licence. Such application shall be in triplicate and must be accompanied by the certificates of longevity of the building issued by the Executive Engineer (R&B), certificate of validity of Electrical and Fire certificate issued by Electrical Inspector. In plain terms, Rule 12-B of the Rules is to the effect that whenever there is a transfer of possession of site, building and equipment (be it noted it is not transfer of title), the applicant seeking transfer has to file a letter of consent in writing of the original licensee, to the effect that he has no objection to the licensee being transferred in the name of transferee has to be filed. If it is a case of transfer of title, the Rule requires an affidavit from the original licensee. A distinction is, therefore, to be made that when it is a mere transfer of possession of building, a letter of consent would suffice, whereas in the case of transfer of title, the original licensee of title holder should necessarily give an affidavit to the effect that he has no objection for transfer of licence.

Rule 12-B deals with renewal of licences to cinema buildings. Under Rule 12-B(2) of the Rules, certain certificates for renewals are dispensed with. Rule 12-B(1) of the Rules with its provisos reads as under.

12-B. Renewal of Licences to cinema buildings:-

1. Within fifteen days of receipt of such application, the licensing authority shall:

(a) If the application is not in accordance with the rules, dispose it of in accordance with clause (a) of sub-rule 91) of Rule 9(B).

(b) If the application is in order, the electrical and fire certificate is valid and if the certificate of longevity of the building initially issued by the concerned Executive Engineer (R&B) is valid for the period for which the renewal of licence is applied for; the licence may be renewed for the period applied for;

Provided further that, in case of an application for renewal of a (licence) in respect of a permanent cinema building, which is made three months in advance of the expiry of the licence, if the authorities concerned do not furnish their reports and certificates in time, the respective certificates shall be deemed to have been renewed.

Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled he may refuse to grant the renewal applied for

and communicate to the applicant the reasons for such refusal.

The other two provisos are omitted.

Under the above Rule, the same procedure that is to be followed at the time of grant of licence under Rule
11-B of the Rules is adumbrated. The Joint Collector can refuse an application for renewal if it is not in accordance with the Act or Rules and if the application is in order, he may renew licence for the period applied after satisfying that the provisions of the Rules are satisfied. Though there is no provision in Rule 12-B (1) akin to Rule 11-B (2) of the Rules requiring the licensing authority to satisfy whether the applicant is in lawful possession of the building or not, having regard to the language in the second proviso to Rule 12-B(1) of the Rules, it has to be held that even at the stage of renewal of licence, the licensing authority must satisfy himself that the applicant is in lawful possession of the cinema building.

In **Smt.Saleha Begum v State of A.P**, this Court considered the question whether Rule 12-B of the Rules contemplates proof of lawful possession for each and every renewal of cinematograph licence. This Court noticed that prior to amendment of the Rules, Rule 11(e) warranted production of evidence of lawful possession for each and every renewal, but when the same was amended and Rule 12-B was re-promulgated, proof of lawful possession at the time of every renewal was done away with. This Court referred to the decision of **Sri Vani Movie Tone v R.D.O., Chandragiri**, wherein it was held that amended
Rule 12-B of the Rules does not require the proof of lawful possession for each and every renewal and therefore, licensing authority is entitled to renew licence without insisting upon the said proof and held that when once the dispute is raised with regard to the lawful possession, the licensing authority is bound to consider the same.

Be it noted that in **Saleha Begum** (supra), this Court relied on the Judgment of a Division Bench in W.A.No.562 of 1987. This question was again considered by a Full Bench of this Court in **Y.Anasuya** (supra), because of the conflict of the view of the Division Bench in W.A.No.562 of 1987 with the view in **Lakshmi Talkies v State of A.P**. The Full Bench while holding that even at the time of renewal, the licensing authority is bound to enquire into the question of lawful possession when an objection is raised by the landlord, observed as under (para 22 of ALT).

> At the same time, we are inclined to think that the omission of 'lawful possession' in Rule 12-B is not without purpose. It appears to us that the rule making authority wanted to dispense with the obligation on the part of the licensing authority to specifically and on his own, address himself to the question of lawful possession at the time of renewal though lawful possession is, as we have already pointed out, a relevant consideration vis-à-vis renewal of licence. The licensing authority would have already applied his mind to that question and satisfied himself that the applicant would remain in lawful possession during the period of licence in terms of sub-rule (2) of Rule 11-B or the old Rule 12. **The person remaining in possession just before or after the expiry of the licence period could be presumed to be in lawful possession, may be, with the consent – express or implied of the landlord. The presumption could, of course, be rebutted**

> **by the landlord by filing objections and relevant material before the licensing authority. But so long as the landlord does not take any objection to the renewal of lease, the renewal could be granted on the footing that the applicant continues to be in lawful possession. The licensing authority need not specifically record his satisfaction regarding lawful possession, not because lawful possession is not a relevant consideration for renewal but because the presumption in favour of lawful possession will operate and the landlord has to come forward to object to the renewal on the ground that the applicant is in unauthorized possession.** That seems to be the reason for omitting the words requiring satisfaction as to legal possession. If the landlord objects to the renewal contending that the lease has come to an end, it then becomes necessary for the licensing authority to enquire into the question whether the applicant is in lawful possession of the theatre and the equipment.
>
> (emphasis supplied)

It is the submission of the learned counsel for the petitioner that the firm M/s.Rama Krishna Theatre stood dissolved with effect from the notice of dissolution, dated 03.11.2000, issued by two partners, who sold the shares to the petitioners, and therefore, renewal of licence in favour of the third respondent, who was representing the newly constituted firm with six partners was illegal because the new firm represented by third respondent cannot be said to be in lawful possession. To appreciate this contention, recapitulation of the factual background is necessary. The firm, M/s.Rama Krishna Theatre was constituted in 1975 with sixteen partners, who are related to each other (in paragraph 2 of the affidavit, this firm is styled as Rama Krishna Talkies, which is a mistake). It was continued year after year with either deletion of partners or addition of partners for various reasons. As per the Deed of Partnership, dated 09.06.1989, there were sixteen partners and the third respondent herein admitted as minor partner to benefits of partnership, but in Deed, dated 07.01.1996, he was declared as major. He is elected to continue as full-fledged partner with the consent by all other partners. Clause (9) of the Deed, dated 09.06.1989 is unequivocal that death or retirement on any partners shall not dissolve the partnership. As per this Deed, N.Sitaramachandra Rao and N.Sundaramma (hereafter referred to as retired partners for identity) were also partners of the firm. There were two partners issued a notice on 30.12.1999 (published on 31.12.1999) to the effect that they are retiring from the partnership from that date and that they are in no way responsible for the affairs of the business of the firm. At that time, the paternal uncle of the third respondent, Narasimha Raju Yadav was managing the business of the theatre as per clause (5) of the Partnership Deed. As he was aging, other partners decided that third respondent should manage the theatre and at that stage, two retired partners issued a notice, dated 03.11.2000 and published the same in newspapers on 07.11.2000 purportedly dissolving the original partnership firm on 07.11.2000, the petitioners herein addressed a letter to the first respondent informing about this and requested not to revive or renew the licence until all the partners requests for renewal of the licence. In this letter, they alleged that retired partners sold their shares in the cinema hall to the petitioners and claimed that they have two shares in the dissolved firm.

In the meanwhile, the firm statedly was reconstituted and Narasimha Raju, the then Managing partner gave a letter of consent. Based on that third respondent addressed a letter, dated 09.11.2000, informing the first respondent that Managing Partner retired voluntarily and that the firm is re-constituted with the surviving partners, who authorized third respondent to run the theatre as per the B-Form licence renewed up to 12.10.2003. He again filed another application on 26.12.2000 along with consent in Form-H requesting first respondent to transfer B-Form licence of M/s.Rama Krishna Theatre. The certificate of registration of the new firm with five other partners was also enclosed. He also filed W.P.No.619 of 2001 before this Court seeking a direction to first respondent to consider the application for transfer of licence as required under Rule 12-A (b) of the Rules. He also sought an order of status quo as on that date, pending consideration of the application made for transfer. The writ petition was accordingly disposed of. The first respondent then issued notice of enquiry to all the partners of the firm including the petitioners herein. The first respondent having noticed that as per clause (9) of the Deed of Partnership, death or retirement does not dissolve partnership firm, directed the Mandal Revenue Officer, Machilipatnam, to send a report. This was done presumably due to the letters addressed by Narasimha Raju Yadav requesting to cancel B-form licence and also letter of consent given by him in Form-H. Be that as it is, the Mandal Revenue Officer conducted enquiry, recorded statements of the persons and submitted a report. That Narasimha Raju is not interested to continue as Managing partner, that twelve out of sixteen (with 75% cumulative share) partners decided to change the Managing partner of the theatre and elected the third respondent as Managing partner, and that B-Form licence can be transferred in favour of the third respondent, are salient aspects of the report of the Mandal Revenue officer. The Mandal Revenue Officer also reported that two retired partners gave a statement about dissolution of the firm, that one partner Kesava Raju died and another partner Venkata Madhava Raju is not available in the village. In view of this, especially, having regard to the consent given by other partners, the Joint Collector concluded that the third respondent is in lawful possession of the theatre and accordingly ordered transfer of B-Form licence in his favour.

Whether the transferee licensee was in lawful possession of the cinema building either on his own or on behalf of the re-constituted firm, is a core question. As per the Transfer Deed, the death or retirement of any partner would dissolve the partnership. This clause cannot be ignored notwithstanding the alleged right of the petitioners as alienees of the share of two retired partners and the provisions of the Partnership Act, on which strong reliance is placed by the learned counsel for the petitioners. Before proceeding further, at this stage, it is necessary to notice the significance of an applicant for B-Form licence or an applicant for renewal of such licence being in lawful possession as a requisite for grant of licence.

Under the Cinematograph Act and the Rules, a person owning the cinema building (with its equipment) and a person having a licence for exhibition of the cinematograph films, could be one and the same or two different persons. Like any other building, a cinema building is also the property of a person and the same can

be enjoyed by the person putting it to proper use by himself or putting it to use by a person who is not the owner of the property. In either case, the person running the cinema theatre under a licence by exhibiting films is alone responsible for discharging all obligations imposed by the Act and the Rules with regard to the exhibition of films, maintaining proper sanitary facilities and/or discharge social responsibilities. A cinema building is a place where large number of people visit to satisfy their entertainment needs. Therefore, law requires that before undertaking the exhibition of cinematograph films, a person should have lawful possession of the cinema building as otherwise he would not be able to discharge his social responsibilities and the obligations imposed by law. If a licence is issued to a person, who has no control either on the exhibition of films, maintenance of proper infrastructural facilities, sanitation, safety measures etc., it would be disastrous because in the event of any mishap, responsibility cannot be fixed on any specific person. Therefore, at the time of granting licence under Rule 11-B of the Rules, it is *sine qua non* that an applicant for licence is in lawful possession of the site, building and equipment. Even at the time of renewal, an applicant for renewal must satisfy that he continues to be in lawful possession of the site, building and equipment of a cinema premises.

Thus for, cases have come up before the Courts regarding disputed contention of lawful possession as between lessor and lessee. A brief reference to these decisions is necessary. A leading case on the concept of 'lawful possession' is **M.C.Chockalingam** (supra). The case arose in the context of Rule 13 of Madras Cinemas (Regulation) Rules, 1957. Under the said Rule, an applicant for a licence is required to produce documentary evidence to show that he is in lawful possession of the site, building and equipment. The respondent before the apex Court, obtained a composite lease of cinema theatre (with land, building and equipment) known as Kapali Talkies, Madras, for a period of three years from 19.08.1969 on a monthly rent of Rs.9,125/- from the lessors (appellants) who were absolute owners of Kapali Talkies. The lease expired on 18.08.1972 and quit notice was issued by the landlords on 15.05.1972. Nonetheless, the first respondent applied to the competent authority for renewal. The appellants also filed an application requesting a licence in their favour. The competent authority renewed the licence in favour of lessee and rejected that of lessors. The appellate authority reversed the orders of the competent authority. Aggrieved by which, the respondent successfully challenged the order of the appellate authority before the Division Bench of Madras High Court. The Division Bench placing reliance on **Lallu Yeshwant Singh v Rao Jagdish Singh**, took the view that lessee's possession after expiry of lease was lawful possession. Before the Supreme Court, the question was whether a tenant who is not a statutory tenant is entitled to claim to be in lawful possession of the premises on determination of the tenancy on expiry of lease. While holding that, the possession of a non-statutory tenant, after expiry of lease, is not lawful possession, the Supreme Court ruled as under (para 16 of AIR).

> Law in general prescribes and insists upon a specified conduct in human relationship or even otherwise. Within the limits of the law, courts strive to take not of the moral fabric of the law. In the instant case, under the terms of the lease, the property had to be handed over to the lessor. Besides

> under Section 108 (q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Since the landlord has not assented to the lessee's continuance in possession of the property, the lessee will be liable to mesne profits which can again be recovered only in terms of his wrongful possession. **Under Section 5 (1) of the Act, the licensing authority in deciding whether to grant or refuse a licence has regard, amongst others, to the interest of the public generally. Public interest is, therefore, also involved in granting or refusing a licence. That being the position. The expression 'lawful possession' in Rule 13 assumes a peculiar significance of its own in the context of the provisions of the Act. Hence in any view of the matter possession of the respondents on the expiry of the lease is not lawful possession within the meaning of Rule 13.** The High Court is, therefore, not correct in its interpretation of Rule 13. The Board of Revenue in appeal was, on the other hand, right in interfering with the order of the licensing authority and the learned single Judge of the High Court rightly refused to interfere with the order of the Board under Article 226 of the Constitution.
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> (emphasis supplied)

In **Koratani Suramma** (supra), this Court considered unamended Rule 11. Making reference to **M.C.Chockalingam** (supra), his Lordship Justice Jeevan Reddy (as he then was), observed as under.

> It may be noticed that, where a person who is not the owner, applies for a licence or transfer of licence, as the case may be, what all clause (e) of Rule 11 requires is that the applicant should prove his lawful possession of the theatre. It is not necessary for this purpose that in every case there should be a formal registered lease deed. There may not be a formal lease but there may be other facts or documents establishing the applicant's "lawful possession". It is for the licensing authority to determine the question, whether the applicant is in lawful possession, or not, on the basis of the material placed before him by the concerned parties and in accordance with the relevant legal position. **Merely because the owner, or some other party denies the applicant's possession, or right to possession, it does not follow that the Joint Collector must refuse the application for licence. He has the necessary jurisdiction to enquire into disputed questions, and to determine whether the possession of the applicant is lawful or not, though it is true that his finding is not final, in the sense that, if the aggrieved party goes to a Civil Court, the decision of the Licensing Authority shall be subject to the decision of the Civil Court.**
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> (emphasis supplied)

In **Krishna Kishore Firm** (supra), the appellant was a registered partnership firm. The said firm obtained lease of land and was running a cinema theatre on the demised land. The original lessor sold the property to one Venkata Ratnam, who formed partnership known as V.V.Estates in 1975. When the cinema licence came up for renewal, V.V.Estates objected as they did not intend to renew lease in favour of appellant which was to expire on 31.03.1976. In the meanwhile, Venkata Ratnam

entered into an agreement of sale with appellant to sell his half share and also executed lease for remaining half share as Managing partner of V.V.Estates. He withdrew the objection before the licensing authority unconditionally. But the other partners, who are son and grandson of Venkata Ratnam refuted the authority of Venkata Ratnam to execute lease. It appears the appellant was granted renewal of licence but on a challenge, this Court held the possession of the appellant not lawful. Before the Supreme Court, the question was whether possession of a lessee, who acquires interest of one of the co-lessors before the expiration of period of lease is *litigious* or lawful. The Supreme Court while distinguishing **M.C.Chockalingam** (supra), reversed the Judgment of the High Court. Having regard to the fact that the appellant firm purchased half share in the property from Venakta Ratnam, Supreme Court held that its possession was lawful. The following observations are apposite.

> Yet another illustration may be, not very common where lessee acquires some interest in part of the undivided property as in present case. Can it be said in such a case on ratio of Chockalingarm case (supra) authority that possession of such lessee or to be more specific of appellant was unwarranted or contrary to law: Share of V. V. in 7000 sq. yds. was half. He had agreed to sell his half interest. V. V. was joint owner with his son and grandson. He had "both single possession and a single joint right to possess" Whether such joint owner could transfer his share even when he was not in exclusive possession and what would be effect of such transfer need not be gone into as title suit is pending between parties but when a person having physical control acquires an interest to hold or continue by virtue of an agreement of sale it cannot be said that he had no interest and his possession was forbidden by law. The High Court lost sight of the fact that by virtue of the transaction entered between V. V. and appellant which was not challenged by him nor any cloud was cast over it by creating any subsequent interest the appellant may not have become owner but he could certainly claim that he was in lawful possession. In law he was entitled to file suit for specific performance if there was any threat to his right or interest by V. V. Such right or interest could not be termed as litigious. It was at least not without any excuse or forbidden by law.

In **Y.Anasuya** (supra), a reference to which is already made, a Full Bench of this Court observed that the requirement of lawful possession is necessarily to be satisfied at the stage of grant of licence as well as renewal of licence. Referring to **M.C.Chockalingam** (supra), the Full Bench observed that the possession as a result of immoral conduct would not subserve public interest. The following are relevant observations. (para 14 of ALT).

> In effect, these observations mean that a court of law shall not as far as possible countenance an immoral conduct on the part of the lessee and secondly the considerations of public interest are also involved in insisting upon lawful possession. **After the expiry of lease, the lessee's possession not backed by any statutory protection, is both unauthorized and precarious. He is liable to be removed from the premises, of course, subject to due process of law. While eviction proceedings are pending, the disputes between the landlord and the tenant remaining in unauthorized possession, may at times, take ugly turn and it may have the effect of dislocating the cinema shows.** All

> these considerations obviously weighed with the rule-making authority in insisting upon the lawful possession as a condition for the grant of licence.
>
> (emphasis supplied)

The decision of the learned single Judge in **Saleha Begum** (supra) was affirmed by a Division Bench in Writ Appeal Nos.1118 and 1183 of 1992, dated 03.09.1993. This was carried in Appeal in **R.V.Bhupal Prasad** (supra) to the Supreme Court. By that time, the decision of the Full Bench of this Court in **Y.Anasuya** (supra) was available. The Supreme Court, therefore, considered the decision in **Saleha Begum** (supra) as well as **Y.Anasuya** (supra). The ratio in **Y.Anasuya** (supra) was affirmed. Before the Supreme Court, it was contended that when once a person enters into possession and remains in possession after expiry of lease, he cannot be treated to be in unlawful possession. The Supreme Court did not agree with the submission. It was observed that the tenant who continues after expiry of lease with the consent of the landlord results in creation of a new tenancy and such lessee is in a better position than a tenant who continues in possession after expiry of lease without consent of the landlord. Such tenant's occupation was held to be wrongful possession. These observations are found in paragraphs 8 and 13 of the Judgment. It is apt to extract the relevant portions.

> Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is title difference between him and a trespasser… A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English Law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted…. **In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theater is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, through initially he had lawful entry.**
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> (emphasis supplied)

On reading all the precedents as above, the following conspectus emerges. The ratio in **M.C.Chockalingam** (supra) shows that the expression "lawful possession" appearing in Rule 11-B of the Rules has peculiar significance of its own in the context of provisions of the Act and the nature of jural relationship between the person in possession and the other person objecting to such possession. The context in which the question crops up cannot be ignored while answering the question, which is always a mixed question of fact and law. The concept of

possession as between the vendor and vendee in a sale transaction, the lessor and lessee, members of joint family, co-owners, persons having common interest and partners of the firm, shareholders/directors of an incorporated company are some of the jural relationships, which cannot be ignored while answering the question regarding lawful possession. The possession of a purchaser of property in the event of sale transaction not fructifying may not be moral but by reason of Section 53-A of Transfer of Property Act, 1882, the possession is not unlawful. Even after completion of sale transaction, as per law, if the seller remains in possession, the same cannot be legal. Likewise, if the lessee continues to hold possession even after expiry or termination of lease, it is not lawful but the same is not the case when the lease/tenancy is protected by a statute like tenancy laws, rent control laws etc. If initially a lessee or tenant is inducted possession of the property pursuant to a contract, if such tenancy is protected by a statute (statutory tenancy), even after expiry of tenancy/lease, the possession does not become unlawful. In the case of joint family members, all constituents have unity of ownership and therefore, possession in the hands of one does not become unlawful with reference to other member and vice versa.

'Possession' is the term of common use. In law, it has great significance. If one has under his control or has power to control a thing, whether he has title to such a thing or not, such person is said to possess the property, whether movable or immovable property. It often happens that a person may enter possession of immovable property without legal title and can enforce his right to possess the property. Such possession confers a *right in rem*, which can be enforced against all including the person with a valid title who inducted the other into possession. In the same situation, if the possession is delivered by true owner for a limited period or a limited purpose, like in the case of lease or licence, if the person continues to be in possession after expiry of lease or licence or completion of the purpose for which possession is given, such a person can be dispossessed through a Court of law on the ground that continuation of such person in possession would be unlawful and causes injury to the right of the true owner. If a person cannot be dispossessed either because the true owner consented for continuance or the possessor continues to enjoy the right to protect possession (even against true owner), such possession would be lawful. In one case, though the possession may be legal but still person can be evicted through Court of law as it would cause injury to the true owner. In another case, even if true owner desires to take back possession, the same cannot be done as the possessor can enforce the right to possess either under an arrangement, contract or consent. In the former case, though there is no unity of ownership, there is unity of possession.

A reference may be made to the nature of possession in relation to joint family. Though the Karta of the family has apparent control of possession, he is deemed to have such controlling authority on behalf of all others and it is a case of unity of ownership and unity of possession. Ordinarily, the Courts are not inclined to restrain a member of the joint family from interfering with the property if it is shown that the property is a joint family property. In the case of a lease, though there is diversity of title, unity of possession continues as long as the jural relation is

governed by a valid legally enforceable contract, which mutually binds lessee and lessor. The cases, which were decided by this Court as well as Supreme Court either with reference to Madras Cinema Regulation Rules or A.P. Cinemas (Regulation) Rules, deal with lessor and lessee, especially, regarding status after the expiry of lease period or termination of lease period. No case of partnership firm (being cinema licensee) has been brought to the notice of this Court nor has been reported in the law reports. What is the nature of possession of property by the firm and the partners of the firm even though one of the partners is alone has apparent control over the immovable property? Whether there is unity of ownership among the partners with regard to the possession as well? These questions have to be answered necessarily by referring to the Indian Partnership Act, 1932 (the Partnership Act, for brevity).

As contended by learned counsel for the petitioners, the possession of the third respondent is not lawful and therefore by transferring the licence, the first respondent has violated Rule 11-B(2) of the Rules. To appreciate this contention, a reference to some of the provisions of the Partnership Act has to be made. Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all and the same is a contract and the relationship of partners is not a status (Sections 4 and 5). Every partner is (See Section 9) bound to carry on the business of the firm to the greatest common advantage of all the partners and take and act in a just and faithful manner. In a business carried on by the firm, every partner has a right to take part in a diligent manner and as per Section 14 of Partnership Act, the property of the firm, and interest and right in the property either existing or acquired later, shall be included in the stock of the firm. Such property shall have to be used by the partners exclusively for the purpose of business. Section 17 of Partnership act adumbrates the rights and duties of the partners. It is to the effect that a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be; b) where a firm is constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry; and
c) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original undertakings.

Sections 4, 14 and 17 of the Partnership Act make it clear that the persons constituting a partnership have unity of ownership in relation to the property of the firm. Section 29 of the Partnership Act further lays down that a transfer by a partner of his interest in the firm does not entitle the transferee to interfere with the conduct of the business or to require accounts but only receive the share of the profits of the transferee partner. Indeed, Section 31 of the Partnership Act prohibits the introduction of a stranger as a partner into the firm without consent of all the existing partners. As long as a firm is not dissolved in accordance with Chapter VI of the

Partnership Act and in accordance with the contract between the partners as per Section 40, all the partners of the firm shall be deemed to be persons having common interest in the right, title and possession of the property. Even if a firm is reconstituted in accordance with the terms of the contract among the partners with or without some new partners, the nature of right, title, interest and possession of the original partners does not change. Indeed, under Section 47 of the Partnership Act, after dissolution of the firm, the mutual rights and obligations of the partners continue notwithstanding such dissolution so far as such rights and obligations may be necessary to wind up the affairs of the company. Therefore, there is nothing to suggest in the Partnership Act to support the view that the possession of immovable property by a few partners after the death or retirement of other partners would become unlawful.

The essence of partnership is sharing the profits of a business carried by all partners or any of them. All the partners in a firm are bound by Contract. Being a partner is not a status, it is a contractual right with attached obligations. In a partnership firm having a covenant for sharing the assets, liabilities and profits equally or proportionate to the investment, each partner can claim title or ownership in relation to the firm's property. Whether or not there is an explicit condition in the contract, by reason of the various provisions in the Partnership Act, an implied condition can be inferred that all the partners enjoy unity of ownership in the property. The property can be movable property or immovable property or intellectual property of the firm like goodwill, trade mark, patent, copyright etc. In all these cases, it would be breach of contract of partnership to deny a share to any partner on the ground that share in the assets is not explicitly declared in the contract. Thus, it is proper to hold that, in law, all the partners enjoy unity of ownership in relation to the immovable property of the firm owned by all the partners. As a necessary corollary, the unity of ownership among the partners leads to a presumption that there is unity of possession by them. Further, by reason of Sections 29, 31 and 32(3) of the Partnership Act, the transferee of a partner's interest cannot interfere with the mutual rights and obligations of the original partners nor the retirement of a partner puts an end to such mutual rights and obligations. The mere entitlement of a transferee to a share in the profits under Section 29(1) or 29(2) of the Partnership Act does not in any manner render possession of original partners unlawful or litigious. The unity of ownership, which is latent, in any concept of firm continues till the dissolution is complete and recorded as per Section 63 of the Partnership Act.

The possession in common law is not any different from the above. Dealing with the concept of co-ownership by the partners Frederick Pollock and Robert Samuel Wright in their book 'An Essay on Possession in the Common Law' (Oxford, 1888 edn.,) pointed out the following legal position.

> In general at common law one of several co-owners or co-bailees of a thing cannot commit trespass or theft in respect of it against the others, for all have possession and right to possession in common; and so a wife cannot at common law steal her husband's goods, nor goods of which he is a co-owner with others. But to the general rule there are some limitations and

exceptions at common law and others by statute.

> **Common law limitations are that, as it seems, a corporator can steal the effects of the corporation; and that where the legal property in partnership effects is vested in trustees or a treasurer, a partner can steal from the trustees or treasurer;** and that if co-owners bail a thing to one of themselves it can be stolen from the bailee by the others or any of them, for they have parted with all their possession. **Statutory exceptions have been made against partners in certain banks, and by the 'Recorder's Act' against members of co-partnerships and joint or common beneficial owners generally.**
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> (emphasis supplied)

It is no doubt true the partners of a firm need not necessarily be co-owners. But if the firm purchases immovable property to carry on business from a premises, all the partners certainly have unity of ownership and community of profit or loss. (See para 5-08 in 'Lindley & Banks on Partnership', 1990, Sixteenth edn.,). In para 18-21, the learned authors referred to **Williams v Williams**, and observed as under.

> The position may be less clear in those cases where co-owners become partners in respect of the profits produced by their jointly owned property, in view of the complete identity between partners and co-owners. However, it is submitted that the same general principle applies, i.e. the mere fact that profits and expenses are shared is in itself insufficient to change the status of an asset. Lord Lindley recognized this:
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> "Suppose, for example, that two or more joint tenants, or tenants in common of a farm or a mine, work their common property together as partners, contributing to the expenses and sharing all profits and losses equally, there will certainly be a partnership; and yet, unless there is something more in the case, it seems that the land will not be partnership property, but will belong to the partners as co-owners, just as if they were not partners at all.

In this case, admittedly, the partnership was formed, which acquired the land and constructed the theatre and therefore, impliedly all the partners are co-owners. It is reasonable to draw an inference in such a manner having regard to averments in the counter affidavit of third respondent.

The conclusions on point No.1 as above also gets support from the observations made by the Supreme Court in para 5 of **Krishna Kishore Firm** (supra). Their Lordships observed that where lessee acquires some interest in part of the undivided property, the litigious right of such lessee does not become unlawful and that the transfer of a share by the joint owner though not in exclusive possession is not forbidden by law. In this case, admittedly after retirement of Narasimha Raju, twelve persons consented for transferring 'B' form licence in favour of the third respondent, that it is a sufficient indication that even though the share of the two persons, who allegedly issued notice of resolution remains disputed, by reason of the persons joining in newly constituted firm in accordance with the deed of partnership, the possession by the third respondent does not become unlawful. The

point is accordingly answered against the petitioners.

In Re Point No.2:

Any discussion on this point can only be with reference to the *prima facie* consideration of matter before this Court. It is the case of the third respondent that Nalli Sitaramachandra Rao and N.Sundaramma published a paper notice in the papers on 31.12.1999 informing that they retired from the firm. A xerox copy of the paper publication is annexed to the material papers filed by the third respondent. As per clause (9) of the Deed of Partnership referred to hereinabove, the retirement of the persons does not in any manner put an end to the firm and it can be continued with the remaining partners. Be that as it is on 07.11.2000, the two petitioners herein addressed a letter to the first respondent informing that the two partners issued a registered notice, dated 03.11.2000 dissolving the firm and published the same in Andhra Jyothi, dated 07.11.2000. They also allege that those two partners transferred their respective shares to the petitioners herein but the registered sale deed, dated 07.11.2000 are not produced before the Court. When those two partners published notice on 31.12.1999 retiring from the firm, it is quite inconsistent as to how they could have dissolved the firm on 03.11.2000 and transferred their share under registered documents on 07.11.2000. This inconsistency is not explained and an attempt is made to ignore this aspect of the matter by projecting the effect of statutory provisions on dissolved firm, which cannot be decided in this writ petition as the suit filed by the petitioners is pending. Further, though the matter was heard over a period of time, the petitioners have not placed before this Court any sale deeds or copies thereof. Therefore, their contention itself stands belied insofar as this writ petition is concerned. The petitioners have already filed a suit for dissolution of the firm and rendition of accounts and subject to proving their right to file such suit, the trial Court has to decide those issues. Insofar as the action of the first respondent is concerned, the petitioners cannot be said to have any *locus standi* as they are strangers to the affairs of the partnership firm, which was initially started by Narasimha Raju and others. This point is answered accordingly. However, be it noted that the civil Court where the suit is pending should decide the matter independently based on evidence without in any manner influenced by the observations on the question of fact in this Order, which are made only for the purpose of this case.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed with costs.

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(V.V.S.RAO,J)

16.03.2006.

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Note: 1] LR copy be marked.
2) Dispatch order copy in one week.

By order

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